THE HON'BLE SRI JUSTICE S. RAVI KUMAR

CIVIL REVISION PETITION No.834 of 2014

Date:28.10.2014

Between:

P. Raghava Reddy

..... Petitioner.

AND

G. Venkata Lakshumma and others.

.....Respondents.

The Court made the following :

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

CIVIL REVISION PETITION No.834 of 2014

ORDER:

This revision is preferred against the orders dated 11-02-2014 in I.A.No.1709/2013 in O.S.No.102/2013 on the file of IV Additional Junior Civil Judge, Kadapa.

2. Brief facts leading to this revision are as follows:-

The revision petitioner is plaintiff in O.S.No.102/2013 who filed suit for permanent injunction against respondents herein and in the suit, he got temporary injunction in his favour and after respondents filed their written statement trail is commenced. Plaintiff was examined as P.W.1 and thereafter plaintiff filed I.A.No.1309/20133 for amendment of plaint seeking relief of declaration also. That petition was resisted by the respondents on the ground that as per provisions

of Order VI Rule XVII CPC, the application is not maintainable. Learned trial Judge, after considering the contentions and rival contentions of both parties, dismissed the application holding that the application for amendment is not maintainable in view of the proviso to Order VI Rule XVII CPC. Now aggrieved by the same, plaintiff preferred present revision.

3. Heard both sides.

4. Advocate for revision petitioner submitted that plaintiff came to know that defendants are claiming title over the suit property only after filing of the written statement and on that application for amendment is filed, after filing of the written statement and by amending the relief. He submitted no prejudice would be caused to the defendants. On the other hand, a comprehensive dispute will be resolved between the parties, without driving the parties to file another suit for the relief of declaration. He submitted that plaintiff can amend his pleadings at any stage before judgment is pronounced, therefore, the observations of the trial Court that the application is not maintainable is not correct and the impugned order, dated 11-02-2011, is liable to be set aside.

5. On the other hand, learned counsel for the respondents contended that plaintiff is well aware of the fact that defendants are disputing the title. He submitted even before filing of the suit, a caveat petition was filed, which is marked as Ex.A4 and a paper publication was also made and even in the interim injunction application, counter is filed disputing the title and in spite of that, no steps were taken for amendment and only after examination of P.W.1 and completion of evidence of P.W.1, the plaintiff came forward with this application and the trial Court has rightly refused the relief of amendment of pleadings by invoking proviso to Order VI Rule XVII CPC and there are absolutely no grounds to interfere with the well considered order of the trial Court.

6. Now the point that would arise for my consideration in this revision is whether the order in I.A.No.1709/2013 in O.S.No.102/2013 on the file of IV Additional Junior Civil Judge, Kadapa is liable to be set aside?

7. **Point:**- Admittedly, the suit is filed for permanent injunction and as seen from the material, the trial Court framed issues on 06-06-2013 and thereafter, trial was commenced on 18-07-2013 and during trial, plaintiff is examined as P.W.1 and through him, Exs.A1 to A4 were marked and when the suit is posted for further evidence, the revision petitioner filed petition for amendment of pleadings on 13-08-2013. According to submissions of counsel for the revision petitioner, the plaintiff came to know about the denial of title only after filing of the written statement, therefore, there was no scope for the plaintiff to file this petition earlier. Now it will be useful to refer to provisions of Order VI Rule XVII CPC., which reads as follows:-

> *"**Order VI Rule 17: Amendment Of Pleadings:***
>
> *The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:*
>
> *Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial."*

8. As per the amended provision, a petition for amendment of pleadings shall not be allowed after commencement of trial, unless the Court comes to the conclusion that in spite of due diligence, party could not have taken the step before commencement of trial. As seen from the affidavit filed in support of the petition for amendment of pleadings, the reason assigned by the plaintiff is that he could not file this application earlier and as the defendants were pressurising him to get along with the trial and that he had no breathing time to think

over about the amendment. But as seen from the material, the plaintiff is in knowledge of denial of title even before institution of the suit as a caveat petition was filed which is also marked as an exhibit through plaintiff in his evidence. So as rightly pointed out by the counsel for the respondents, the contention that that the plaintiff came to know about the denial of title only after filing of written statement is absolutely incorrect and the said plea is contrary to the material on record. The learned trial Judge elaborately discussed each and every aspect and gave cogent and convincing reasons in support of his finding that the application is not maintainable in view of the proviso to Order VI Rule XVII CPC. I do not find any wrong exercise of judicial discretion by the learned trial Judge, and trial Court rightly dismissed the application considering the proviso to Order VI Rule XVII CPC.

9. On a scrutiny of the material, I am of the view that there are absolutely no grounds to interfere with the findings of the trial Court as the plaintiff failed to show that he could not file this application before commencement of trial in spite of his due diligence.
On the other hand, it shows that there is negligence on the part of the plaintiff in not claiming this relief even at the time of filing of the suit, though he was aware that the title is in dispute.

10. For these reasons, I am of the view that the revision is liable to be dismissed as devoid of merits.

11. Accordingly, revision is dismissed as devoid of merits. No costs.

12. As a sequel, miscellaneous petitions, if any, pending in this Civil Revision Petition, shall stand dismissed.

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JUSTICE S. RAVI KUMAR

Date:28.10.2014
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